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Method on Declarations of Concentrations of Business Operators

经营者集中申报办法

Method on Examinations of Concentrations of Business Operators

经营者集中审查办法

【 Issued by 】 Ministry of Commerce of the People's Republic of China

【 Subject 】 Concentrations of Business Operators

【 Promulgated on 】 November 21th/24th, 2009

【 Effective from 】 January 1st, 2010

【 Source 】 <http://www.mofcom.gov.cn>

On January 1, 2010, the Method on Declarations of Concentrations of Business Operators (hereinafter referred to as "Declaration Method") and the Method on Examinations of Concentrations of Business Operators (hereinafter referred to as "Examination Method") issued by the Ministry of Commerce took effect. Concentration of business operators in these methods refers to: (1) merger of business operators; (2) a business operator acquires control over another business operator by way of acquiring shares or assets of the latter; and (3) a business operator acquires control over another business operator or becomes capable of exerting decisive influence upon another business operator by way of contract or other means.

The Declaration Method

This Method is drafted in accordance with the "Anti-Monopoly Law of the People's Republic of China" and the "Provisions of the State Council on the Concentration of Operators Application Criteria". The Declaration Method clarifies the contents, which include the form of the concentration of operators, the scope of the calculation of business turnover, the declaration documents, etc.

According to Article 4 of the Declaration Method, "turnover" includes the involved operators' income from sale of products and provision of services in the previous accounting year after deduction of the applicable taxes and surcharges.

Article 5 of the Declaration Method provides: the turnover of each single operator participating in a concentration is the total turnover of the following operators:

- (i) the operator in question;
- (ii) other operator(s) directly or indirectly controlled by the operator in (i) of this Article;
- (iii) other operator(s) directly or indirectly controlling the operator in (i) of this Article;
- (iv) other operator(s) directly or indirectly controlled by such other operator(s) in (iii) of this Article;

- (v) other operator(s) jointly controlled by two or more such other operators specified in (i) to (iv) of this Article.

The turnover of each single operator participating in a concentration does not include turnover made between operators in (i) to (v) of this Article.

In addition, The Declaration Method has listed all documents which must be submitted to MOFCOM and requires that these documents should be submitted both in hard copy and in electronic form.

The Examination Method

The Ministry of Commerce acts as the designated authority of the anti-monopoly examination of concentrations of operators and is responsible for accepting and processing applications for concentrations of operators.

According to the Examination Method, in the course of the examination, the Ministry of Commerce may organize a hearing at its discretion or upon an interested party's request to collect evidence and opinions from other interested parties.

Moreover, if the Ministry of Commerce decides not to conduct any further examination or does not make a decision within the time limit of the preliminary examination, or the Ministry of Commerce decides not to prohibit the concentration in question or does not make a decision before the time limit in the course of the further examination, the operators in question may conduct the proposed concentration.

These two methods provide detailed guidelines for the implementation of anti-monopoly law.

The Tentative Measures for Establishing Foreign-Invested Private Equity Investment Fund Management Enterprises

在京设立外商投资股权投资基金管理企业暂行办法

【Issued by】 Beijing Finance Bureau, Beijing Municipal Commission of Commerce, Beijing Administration for Industry and Commerce, and Beijing Municipal Commission of Development and Reform

【Subject】 Foreign Investment

【Promulgated on】 December 22th, 2009

【Effective from】 January 01th, 2010

【Source】 <http://www.bjpc.gov.cn>

On December 22, 2009, Beijing Finance Bureau, Beijing Municipal Commission of Commerce, Beijing Administration for Industry and Commerce, and Beijing Municipal Commission of Development and Reform jointly issued The Tentative Measures for Establishing Foreign-Invested Private Equity Investment Fund Management Enterprises (hereinafter referred to as the tentative Measures). The tentative Measures became effective on January 1, 2010, and are valid for hongguancun Independent Innovation Demonstration Zone. The trial period is 3 years.

According to the Measures, foreign companies, enterprises and other economic institutions, or individuals may establish wholly foreign-owned private equity management companies, or set up joint-venture private equity management companies with local companies.

The Notice clarifies that the Foreign-Invested Private Equity Investment Fund Management Enterprises (hereinafter referred to as "FPEE") should meet the following requirements:

- (1) A FPEE shall be set up in the form of Limited Liability Company. In the case of national policy allows, foreign investors may establish a FPEE in Beijing in the form of partnership or other non-corporation forms;
- (2) The registered capital of a FPEE shall be no less than 2 million US dollars;
- (3) A FPEE shall have at least two senior managers, who meet the following conditions:
 - (a) work experience in this field or related field for at least two years;
 - (b) have good personal credit record, and no record of wrongdoing and no ongoing economic litigations in the past five years.

Moreover, pursuant to the tentative Measures the business scope of a FPEE is limited to "being commissioned to accept other private equity investment funds and undertaking non-securities private equity management and consulting, and not being allowed to be engaged in other business activities."

The tentative Measures also provide competent authorities for establishing foreign-invested private equity investment fund management enterprises.

Notice on Further Improving the Administration of Registration for Resident Representative Offices of Foreign Enterprises

关于进一步加强外国企业常驻代表机构登记管理的通知

【Issued by】 The State Administration for Industry and Commerce and Ministry of Public Security

【Subject】 Foreign Companies' Resident Representative Offices

【Promulgated on】 January 4th , 2010

【Effective from】 January 4th , 2010

【Source】 <http://www.saic.gov.cn>

Since China has opened its market, resident representative offices of foreign enterprises (hereinafter referred to as "representative offices") have been playing an active role in attracting foreign investments in China and assisting in China's economic and social development. In order to improve the administration of representative offices and practically safeguard the market economic order, the State Administration for Industry and Commerce and Ministry of Public Security jointly issued the Notice on Further Improving the Administration of Registration for Resident Representative Offices of Foreign Enterprises (hereinafter referred to as the Notice) on January 4, 2010. The Notice became effective on the same day.

The Notice reinforces the examination of the registration materials of representative offices. According to the Notice, if a representative office is to be established or applies to change its name, the foreign company must provide a legally valid business certificate showing that the enterprise connected with the representative office in question has been lawfully existing for more than two years and the capital credibility certificates issued by the financial institutions, which have business connections with such enterprise. This certificate must be notarized and authenticated by a public notary firm in such foreign country or region and by the embassy or consulate of the PRC located in such foreign country or region.

In addition, the Notice standardizes the terms of validity of the registration certificates to 1 year for all representative offices. For the registration certificates which have been issued and are valid for more than one year, replacements are required when affected representative offices are to alter or extend their registrations.

In accordance with the Notice, the number of representatives of a representative office shall depend upon such representative office's operations. Generally, the number of representatives of a representative office (including the chief representative) should not exceed 4. An existing representative office, which has more than 4 representatives, is only

permitted to decrease the number of representatives but not allowed to add more representatives.

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